IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

CRL.A.No. 454 of 1999(A)

ST.3189/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR .
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APPELLANT: COMPLAINANT

RAVI, S/O. UNNI,, AGED 52 YEARS,
BUSINESS, THAIVALATH, KUZHOOR
DESOM, KAKULISSERY VILLAGE,.
MUKUNDAPURAM TALUK, TRICHUR, DISTRICT.

BY ADV. SRI.V.M.KRISHNAKUMAR

RESPONDENT: ACCUSED
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1. **DEVASSY, S/O.PARAPPUKKARAN PORINCHU,**
AGED 48 YEARS, CHERPU VILLAGE,
THRISSUR DISTRICT P.O., CHERPU (DIED)

2. **JOSE PRAKASH, S/O. PALLISSERY RAPPAI,**
P.O. CHERPU, CHERPU VILLAGE, THRISSUR TALUK,
THRISSUR (DISTRICT)

BY ADV. SRI.GEORGE THOMAS (MEVADA)
SRI.RATHISH VIJAYENDRAN
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl. Appeal No.454 of 1999

Dated this the 25th day of July, 2007

JUDGMENT

The appellant is the complainant in S.T.No.3189/96 with respect to the offence under Section 138 of the Negotiable Instruments Act which stands dismissed and the accused acquitted.

2. A1 was no more at the time of trial itself. The complainant's case is that a sum of Rs.60,000/- was borrowed from him by the accused on 24.3.1995 and towards discharge of the same, the impugned cheque was issued which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent demanding payment was not replied to nor was any amount paid.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 3 and Exts. P1 to P10. The defence examined DW1 and DW2 of whom DW2 is the second accused himself and marked Exts. D1 to D4.

4. The case of the defence is that only a sum of

Rs.20,000/- was borrowed and out of which Rs.19,000/- was repaid and that there was a dispute with respect to the interest due and hence the blank cheque issued at the time of the borrowal has been misused by incorporating the amount of Rs.60,000/-. According to the defence at the time of the transaction a pro-note was executed, the original of which according to the accused is with the complainant. According to the defence, it is the case that in the agreement the amount is mentioned as Rs.40,000/-. They have also produced the copy of the agreement, i.e., Ext. D1, Ext. D2 photo copy of the blank cheque, Ext. D3 reply notice sent raising the above contentions which was received by the complainant who is the brother of the accused after filing of the complaint and Ext. D4 acknowledgment card. The court below has relied on certain circumstances that has brought out in the evidence in order to non suit the complaint. The relevant fact is that the cheque was presented just on the brink of the expiry of the validity of the date of the cheque. The cheque dated 25.8.1995 was presented on 15.2.1996. There is no explanation for not presenting the cheque at about six months after the date of the cheque. The above

circumstance is fortified by the fact that Ext. D1 photo copy of the agreement which is dated 24.3.1995 is the pro-note that support the defence case and Ext. D1 contains the cheque number as well. The photocopy of the blank cheque is Ext. D2. The lower court has also noted that the writings of the details in the cheque is different from signature i.e., with respect to the ink used. It was on the basis of the cumulative effect of the entire circumstances that court found that the defence has established a probable case and that the complainant has failed to establish the execution of the cheque.

5. In the above circumstances, I find no reason to interfere in the findings of the court below in exercise of the appellate jurisdiction against acquittal.

The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl